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Supreme Court, U.S.
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No. 96-374

In The

Supreme Court of the United States

October Term, 1996

SCHNEIDER NATIONAL CARRIERS, INC.
AND HENRY LAVERNE WUBBEN,

Petitioners,

vs.

RICHARD PYATT AND DIANE PYATT,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

BRIEF OF RESPONDENT RICHARD PYATT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBBYE HILL TOFT
633 Sherwood Drive
St. Louis, Missouri 63119
(314) 961-6785

Counsel for Respondent

Dated: December 5, 1996

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OR CALL COLLECT (402) 342-2831

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Respondent respectfully suggests that the remaining issues framed by petitioner are more accurately stated as follows:

1. Should the federal standard for determining the sufficiency of the evidence apply in a diversity case when pleadings, discovery and evidentiary questions have been determined according to the federal rules?

2. Would petitioners have been granted judgment as a matter of law if the trial court applied the Illinois *Pedrick* standard for determining the sufficiency of the evidence rather than the federal reasonable man standard?

PARTIES TO THE PROCEEDING

Respondent Richard Pyatt, an individual, was an Illinois resident at the time his Complaint was filed.

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STATEMENT OF THE CASE

Respondent Richard Pyatt (Pyatt) incorporates by reference the factual statements in the opinion of the Seventh Circuit Court of Appeals. (Pet. App. 1-5) Respondent notes that in the body of its opinion, the Seventh Circuit Court of Appeals referred to "The fact that Richard had prior neck problems and later injured his back at work. . . . " (Pet. App. 8) There was no evidence of either at trial.

REASONS FOR DENYING THE WRIT

First, respondent admits that Circuits have shifted thoughts as to whether, in diversity actions, federal courts should review of the sufficiency of the evidence by the federal standard or the applicable state standard. Petitioners have not provided any reason why the standard for judging the sufficiency of the evidence post-trial should be different from that applied both pre-trial and in determining the sufficiency of the evidence on damages. Second, petitioners have failed to show how application of the state standard in reviewing the sufficiency of the evidence would have produced a result different from that produced by application of the federal standard for reviewing the sufficiency of the evidence; i.e., how the result of the litigation materially differed because petitioner removed the case to federal court. Third, the sufficiency of the evidence is case specific, and is not an issue that warrants the Court's attention.

I. The Federal District Court Properly Applied The Federal Reasonable Man Standard In Reviewing The Sufficiency Of The Evidence In This Case.

The federal district court followed the Seventh Circuit's 1994 opinion in *Mayer v. Gary Partners & Co.*, 29 F.2d 330 at 334-335, that the standard in federal court for judgment as a matter of law is a federal not state standard, namely, whether reasonable minds could deem the evidence adequate under the governing [state] substantive rule. (Pet. App. 5) Petitioners seek reversal of the Seventh Circuit and the majority of the Circuits applying the federal reasonable man standard.

Petitioners raise the flag of intrusive federal government, claiming that applying a federal standard in a diversity action violates the *Erie Doctrine*. In doing so Petitioners overlook the twin aims of the *Erie Doctrine*: to discourage forum shopping and to avoid inequitable administration of the laws. *Erie R. Co. v. Tompkins*, 304 U.S. 64 at 74-75, 58 S.Ct. 817 at 820-21 (1938).

As to the first aim of the *Erie Doctrine*, the avoidance of forum shopping, it must be noted that respondent Pyatt did not choose the forum of the U.S. District Court. Rather, petitioners removed the case to federal court. (Pet. App. 36-39)

There being no concern that respondent was guilty of forum shopping, the next concern driving development of the *Erie Doctrine* must be addressed: inequitable administration of the laws. Noticeably absent from petitioners' brief before the Seventh Circuit and its Petition for Writ of Certiorari is any discussion on this point.

The Court in *Erie* was concerned with fundamental equal protection problems. 304 U.S. at 74-76, 58 S.Ct. at 820-21. To assist courts in addressing that issue, this Court set forth the "outcome-determinative" test in *Guaranty Trust Company of New York v. York*, 326 U.S. 99 at 109, 65 S.Ct. 1464 at 1470 (1945). Subsequently this Court noted in *Hanna v. Plumer* that the problem in applying the "outcome-determinative" test or any other "litmus paper" criterion can lead one to sense that every procedural variation between state and federal court procedure is "outcome-determinative". 380 U.S. 460 at 468, 85 S.Ct. 1136 at 1142.

Unfortunately, *Hanna* provides little further guidance in this case. In *Hanna*, the Court was asked to decide if state law requiring service of process on the executor of an estate by leaving suit papers literally in the executor's hand controlled so as to invalidate service accomplished under the Federal Rules of Civil Procedure by leaving suit papers at the executor's home with his spouse. 380 U.S. at 461-62, 85 S.Ct. at 1138-39. Given the Federal Rule of Civil Procedure directly on point, this Court chose not to "disembowel either the Constitution's grant of power over federal procedure or Congress' attempt to exercise that power in the Enabling Act." 380 U.S. at 473-74, 85 S.Ct. at 1145.

There is no federal rule to guide us here. Rather, there is a uniform "standard" which federal courts have adopted to determine if a jury's verdict should stand. Is such a standard an encroachment upon "those primary decisions respecting human conduct which our constitutional system leaves to state regulation?" That was the

question asked by Justice Harlan in his concurring opinion in *Hanna*. 380 U.S. at 475, 85 S.Ct. at 1146.

The only answer to this question is that it is not. No Illinois citizen considers the standard by which a judge will determine the sufficiency of the evidence in a jury trial before that citizen decides how to conduct his affairs. Such concerns are entertained solely by attorneys and judges.

Petitioners have presented no theory under which *Erie* or its progeny would require application of the Illinois state standard of review rather than the federal. The forum shopping, if any, was paid for by the petitioners. There is no suggestion of a due process violation. No one acted or failed to act based upon a mistaken belief that the adequacy of the evidence would be decided by the state rather than the federal standard.

Given that Federal Rules of Evidence and Civil Procedure often more liberally allow discovery and admission of evidence than do states, the federal standard for reviewing the sufficiency of the evidence necessarily reflects liberality of the discovery and evidentiary rules. Theoretically, a state's discovery and evidentiary rules are in concert with state standards for reviewing the sufficiency of the evidence.

Petitioners ask federal courts to switch horses, not midstream, but rather one step before reaching the bank. Petitioners want federal judges to attempt to decipher each state's standard for reviewing the sufficiency of the evidence, when the state courts themselves are unclear as to their standard of review. *See Pedrick v. Peoria and Eastern Railroad Company*, 37 Ill.2d 494, 229 N.E.2d 504 (Ill.

1967). In essence, petitioners seek to have the state law in diversity cases determine who should decide the case: when is there sufficient evidence to permit a jury to render the verdict and when should a federal judge in a diversity case direct the verdict.

The Seventh Circuit noted that "nothing in *Erie* or the Rules of Civil Procedure commands a federal court to accept the state's views about who should evaluate the evidence". *Mayer v. Gary Partners and Co., Ltd.*, 29 F.3d 330 (1994).

> If reasonable persons could not find that the evidence justifies a decision for a party on each essential element, the court should grant judgment as a matter of law – before trial under Rule 56, later under Rule 50, and using the same federal standard each time. By linking the standard for summary judgment to the standard for overturning a verdict, *Anderson* [*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)] and *Celotex* [*Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)] leave no other option.

29 F.3d 330, 335.

The federal standard is eminently fair: could reasonable minds deem the evidence adequate under the Illinois substantive law. *Id.* Perhaps the Court should relieve the circuits of their concern as to which standard they should apply in reviewing the sufficiency of the evidence in diversity cases. Certainly the reasonable man standard is the most thoughtful and best articulated. It is also the simplest standard by which citizens of any state can

determine if they can prove their case or defend themselves in a civil jury trial.

II. Petitioners Have Failed To Show How Application Of The State Standard In Reviewing The Sufficiency Of The Evidence Would Have Produced A Result Different From That Produced By Application Of The Federal Standard For Reviewing The Sufficiency Of The Evidence.

Federal Rule of Civil Procedure 50 sets forth the standard by which federal courts shall determine if a judgment as a matter of law shall be granted during a trial:

> (1) If during a trial by jury a party has been fully heard on an issue and *there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue,* (emphasis added) the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

While section (b) of Rule 50 addressed renewing a Motion for Judgment after trial, it does not restate the standard of review. However, this Court in *Anderson* and *Celotex, supra,* has directed that federal courts consistently apply the reasonable jury standard from summary judgment considerations through post-trial motions.

The standard of review applied by Illinois courts was most recently clarified by the Illinois Supreme Court in

Pedrick v. Peoria and Eastern Railroad Company, 229 N.E.2d 504, 37 Ill.2d 494 (1967). It is clear that until *Pedrick*, Illinois had not clearly enunciated the precise standard to be applied to determine when a verdict should be directed or a judgment entered. 229 N.E.2d 504 at 509.

The great irony of Petition for Certiorari in this case becomes apparent when one studies the basis for the Illinois standard of review and the Illinois Supreme Court's great effort to pattern its standard after the federal reasonable man standard:

> This court has said with some frequency that negligence and contributory negligence become questions of law when all of the evidence, viewed in its aspect most favorable to the party against whom the court would rule is such that *reasonable minds would reach the same conclusion.* (emphasis added)

37 Ill.2d at 502, 229 N.E.2d at 509.

The Illinois Supreme Court has also expressed an apparently different standard: that when all of the evidence is considered in its light most favorable to the party against whom the verdict would be directed, together with all reasonable inferences therefrom, and it appears that there is no evidence in favor of the nonmovant on an essential issue in the case, it is the trial court's duty to direct the jury accordingly. *Smith v. Bishop*, 32 Ill.2d 380, 384, 205 N.E.2d 461 (1965). But the *Pedrick* court went on to note that the Illinois Supreme Court had linked the reasonable minds test and the any evidence test by quoting the standards interchangeably, 37 Ill.2d 494 at 503, 229 N.E.2d 504 at 509.

To clarify what might be murky water left by the *Pedrick* standard, the Illinois Supreme Court stated in black and white terms in its 1992 opinion in *Maple v. Gustafson*:

> The court has no right to enter a judgment n.o.v. if there is any evidence, together with reasonable inferences to be drawn therefrom, demonstrating a substantial factual dispute, or where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome.

177 Ill. Dec. 438 at 442, 603 N.E.2d 508.

Petitioners here attempted to entice Magistrate Proud to do exactly what the Illinois Supreme Court forbade Illinois judges to do in *Maple* – to take away a verdict because of alleged conflicting evidence. Petitioners would have no basis for j.n.o.v. in the Illinois courts, and they had no basis for judgment as a matter of law in the U.S. District Court in the Southern District of Illinois.

Regardless of the standard by which the evidence in this case is reviewed, plaintiff made a submissible case. Petitioners' arguments on conflicting evidence were for closing argument, not for the U.S. Supreme Court. While there is a lack of clarity on the applicable standard among the Circuits, the standard applied was irrelevant in this case. This case does not present an illustration by which application of the federal standard versus the state standard would produce different results.

III. The Sufficiency Of The Evidence Is Case Specific, And Is Not An Issue That Warrants The Court's Attention.

Petitioners have alleged no denial of a constitutional right by application of the federal standard of review to an action petitioners themselves removed to the District Court. While the Illinois standard and the federal standard may be framed in different language, they produce the same result. The Illinois Supreme Court, after considering the standard of review not only in the federal courts but also in the fifty states, concluded its decision in Pedrick stating:

> And since it is well settled that trial courts may constitutionally direct verdicts, minor variations in the rules governing such action can scarcely render it unconstitutional.

37 Ill.2d at 511, 229 N.E. at 514.

So it can be said here. To bother this Court with a review of each evidentiary issue in a minor personal injury case cannot be justified.

CONCLUSION

Petitioners have presented no basis for granting the Petition for Writ of Certiorari in this action, and the Petition should therefore be denied.

Respectfully submitted,

Robbye Hill Toft
633 Sherwood Drive
St. Louis, Missouri 63119
(314) 961-6785
Counsel for Respondent